

ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN PETROLEUM INSTITUTE,

Petitioner,

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

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No. 12-1330

MOTION TO CONSOLIDATE

Respondent the United States Environmental Protection Agency (“EPA”) moves to consolidate this case with *American Fuel & Petrochemical Manufacturers v. EPA*, No. 12-1249 (D.C. Cir.). The Court generally consolidates “all petitions for review of agency orders entered in the same administrative proceeding. In addition, other cases involving essentially the same parties or the same, similar, or related issues, may be consolidated.” HANDBOOK OF PRACTICE AND INTERNAL PROCEDURES at 23 (D.C. Cir. December 1, 2010).

Both this case and No. 12-1249 challenge the same agency action under the Clean Air Act, entitled “Response to Petition of the American Petroleum Institute (API) and the National Petrochemical and Refiners Association (NPRA) for Reconsideration of Portions of the December 9, 2010 Rule Amending the

Renewable Fuel Standard Program Regulations and Response to Petitions by API, NPRA, Western States Petroleum Association (WSPA) and Coffeyville Resources Refining & Marketing, LLC (Coffeyville) for a Waiver of the 2011 Cellulosic Biofuel Standard.”

In addition, Petitioner in this case intends to argue that EPA acted arbitrarily and capriciously in denying a petition to reconsider the 2011 cellulosic biofuel standard, and in denying a petition to waive the 2011 cellulosic biofuel standard. *See* Nonbinding Statement of Issues to be Raised (filed Aug. 24, 2012). These issues are identical to those Petitioners in No. 12-1249 intend to raise. *See* Petitioners’ Nonbinding Statement of Issues, *American Fuel & Petrochemical Manufacturers v. EPA*, No. 12-1249 (filed July 12, 2012).

API in this case intends to raise an additional issue, seeking judicial review not just of EPA’s denial of the petition to reconsider, but also of the final agency action in which EPA promulgated the 2011 cellulosic biofuel standard itself. *See* Nonbinding Statement of Issues to be Raised (filed Aug. 24, 2012), issue 1. The United States intends to file a motion to dismiss No. 12-1330 to the extent API seeks to raise this additional issue, because API’s challenge comes more than 60 days after the date on which the 2011 standards were published in the Federal Register. *See* 42 U.S.C. § 7607(b)(1) (filing a petition for reconsideration “shall not affect the finality of such rule or action for purposes of judicial review nor

extend the time within which a petition for judicial review of such rule or action may be filed”). Regardless of the outcome of that motion, however, Nos. 12-1249 and 12-1330 meet the standard for consolidation and should be consolidated.

On August 24, counsel for Petitioner advised the undersigned counsel for EPA that Petitioner takes no position on this motion to consolidate.

Respectfully submitted,

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August 24, 2012

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2012, I electronically filed the foregoing with the Court by using the CM/ECF system, which will send a notification to the attorneys of record in this matter, who are registered with the Court's CM/ECF system.

/s/ Daniel Dertke
Daniel Dertke